

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2011-294-C - ORDER NO. 2012-724
SEPTEMBER 27, 2012

IN RE:	Application of Budget Prepay, Inc. d/b/a)	ORDER DESIGNATING
	Budget Phone for Designation as a Non-)	BUDGET PREPAY, INC.
	Rural Wireless Eligible Telecommunications)	D/B/A BUDGET PHONE
	Carrier)	AS AN ELIGIBLE
)	TELECOMMUNICATIONS
)	CARRIER FOR THE
)	PROVISION OF LIFELINE
)	SERVICE

This matter comes before the Public Service Commission of South Carolina (the “Commission”) and concerns the above captioned Application of Budget Prepay, Inc. d/b/a Budget Phone (“Budget”) for Designation as an Eligible Telecommunications Carrier (“ETC”) in the State of South Carolina for the limited purpose of offering Lifeline service to qualified households filed July 21, 2011 (the “Application”).

For the reasons explained in this Order, the Commission has concluded that the Application should be approved and that designation of Budget as an ETC on the terms provided in this order would serve the public interest.

BACKGROUND

Budget filed the Direct Testimony of David Donahue on September 14, 2011, and the Supplemental Testimony of Mr. Donahue on July 17, 2012. On March 20, 2012, Budget supplemented its Application in response to the Federal Communications

Commission's ("FCC") *Lifeline Reform Order*¹ and provided the Commission with a copy of the Compliance Plan that it submitted for approval by the FCC. On May 30, 2012, Budget advised the Commission that the FCC had approved Budget's Compliance Plan and granted forbearance from the "own facilities" requirement as provided by the *Lifeline Reform Order*. In addition, on July 9, 2012, Budget filed with the Commission a Stipulation entered into between Budget and the South Carolina Office of Regulatory Staff ("ORS") (the "Stipulation").

As directed by the Commission, notice of the filing of the Application was published and proof of publication provided to the Commission on August 15, 2011. No petitions to intervene were filed in this matter. ORS is a party pursuant to statute.

The Stipulation recommends that Budget be designated as a wireless ETC for the limited purpose of providing Lifeline service to qualified households in accordance with the terms of the Stipulation. A copy of the Stipulation is attached hereto as Appendix A.

On July 23, 2012, Budget filed a Motion for Expedited Approval, requesting that the Commission waive the hearing scheduled for August 23, 2012, at 10:30 a.m., admit certain prefiled testimony and exhibits into the record, grant expedited consideration of the Application, and approve the Application. The ORS did not object to this motion. Having considered the record before it, the Commission finds that the record before it is sufficient to make a final determination in this matter and that the interests of judicial economy are served by waiving the hearing and granting expedited consideration.

ANALYSIS

¹ *Lifeline and Link Up Reform and Modernization, et al.* WC Docket No. 11-42, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 (rel. Feb. 6, 2012) ("*Lifeline Reform Order*").

Section 214(e)(2)(e) of the Telecommunications Act of 1996 (the “Act”) authorizes state commissions to designate common carriers that meet the requirements as ETCs.² Section 103-690 of the S.C. Code Ann. Regs. provides that the Commission will fulfill its responsibility to designate common carriers as ETCs and establishes the requirements that an applicant must meet in order to be designated an ETC.³

As demonstrated in the Application, the Testimony, the Stipulation, and the company’s Compliance Plan, Budget satisfies all the relevant requirements for designation as an ETC specified in Sections 254 and 214 of the Act and Section 103-690 of the S.C. Code Ann. Regs. Budget is (i) a common carrier as defined by 47 U.S.C. Section 153(10), (ii) offers all the supported services,⁴ (iii) uses its own facilities to provide the services, and (iv) offers service throughout its designated service area. Additionally, it has been demonstrated that following designation, Budget will (v) advertise the availability of its Universal Service offerings and charges through media of general distribution, specifically its Lifeline services throughout its ETC service area, and will provide notices at local unemployment, social security and welfare offices in satisfaction of S.C. Code Ann. Regs. Sections 103-690.1E(a)(1) and 103-690.1E(b)(1), (vi) make Lifeline service available to qualifying low-income consumers without requiring a service deposit in order to initiate Lifeline service if the consumer elects toll limitation services, will not charge such customer a monthly number portability charge, will verify annually that its Lifeline customers meet the qualifications and will provide

² 47 U.S.C. Section 214(e)(2).

³ See S.C. Code Reg. Section 103-690C.

⁴ 47 U.S.C. Section 254(c); 47 C.F.R. Section 54.101(a); and S.C. Code Reg. Section 103-690C(a).

sixty (60) days notice to customers which it believes no longer qualify for Lifeline service,⁵ (vii) certify that it complies with the service requirements applicable to the support it receives, (viii) be able to remain functional in emergency situations,⁶ (ix) satisfy consumer protection and service quality standards which are set forth in the CTIA Consumer Code as described in the Application including annual certification of its compliance and reporting of consumer complaints in accordance with S.C. Code Ann. Regs. Sections 103-690(C)(1)(a)(C)(3) and 103-690.1B(b)(4), (x) provide Lifeline local usage plans comparable to the incumbent local exchange carriers already operating in the area, (xi) comply with applicable reporting requirements including, but not limited to annual progress reports required in S.C. Code Ann. Regs. Section 103-690.1, annual certification that it is able to remain functional in emergency situations required by S.C. Code Ann. Regs. Section 103-690.1B(b)(2) and annual outage reporting requirements of S.C. Code Ann. Regs. Section 103-690(B)(b)(2), and (xii) as explained below, take steps to limit fraud, waste and abuse in the federal universal fund programs.

On February 6, 2012, the FCC adopted comprehensive reforms to the low-income program to revise the Lifeline service requirements.⁷ In the Lifeline Reform Order, the FCC adopted specific reforms attempting to limit fraud, waste and abuse in the low-income program. Budget commits to compliance with the rules as they are applicable.

Section 103-690C(b) of the S.C. Code Ann. Regs. provides that, in determining whether an ETC designation is in the public interest, the Commission must consider,

⁵ See S.C. Code Ann. Regs. Section 103.690.1E(a)-(b).

⁶ S.C. Code Ann. Regs. Section 103-690(C)(a)(2).

⁷ *In the Matter of Lifeline and Link Up Reform and Modernization, Report and Order and Further Notice of Proposed Rulemaking*, WC Docket No. 11-42, FCC 12-11, released February 6, 2012. (“Lifeline Reform Order”).


inter alia, the benefits of increased consumer choice and the unique advantages and disadvantages of the applicant's service offering.

Considering all factors, the Commission determines that it is in the public interest that the Commission grant Budget ETC designation for the limited purpose of providing Lifeline service.

IT IS THEREFORE ORDERED THAT:

- I. The Testimony and Stipulation are accepted into the record without objection.
- II. The Applicant's Motion to Waive the Hearing and Expedite Consideration is granted.
- III. Budget Prepay, Inc. d/b/a Budget Phone is hereby designated as an ETC for the limited purpose of providing Lifeline service as requested in the Application on the terms provided in the Stipulation.

BY ORDER OF THE COMMISSION:


David A. Wright, Chairman

ATTEST:


Randy Mitchell, Vice Chairman
(SEAL)

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2011-294-C
July 9th 2012

IN RE: Application of Budget PrePay, Incorporated)
d/b/a Budget Phone for Designation as a Non-) **STIPULATION**
Rural Wireless Eligible Telecommunications)
Carrier)

This Stipulation is made by and among the Office of Regulatory Staff (“ORS”) and Budget PrePay, Incorporated d/b/a Budget Phone (“Budget” or “the Company”) (collectively referred to as the “Parties” or sometimes individually as “Party”).

WHEREAS, on July 21, 2011, Budget filed its Application requesting Designation as an Eligible Telecommunications Carrier (“ETC”);

WHEREAS, ORS has reviewed the Application and testimony of David Donahue, filed on September 14, 2011;

WHEREAS, Budget is only seeking additional wireless ETC Designation for the purpose of participation in the Federal Universal Service Low Income Fund (“federal USF”);

WHEREAS, Budget will provide Lifeline service under the brand name “Budget Mobile”; and

WHEREAS, as a result of its investigations, ORS has determined that subject to the provisions set forth below, Budget’s request for designation as an ETC should be approved.

WHEREAS, Budget drafted and filed a compliance plan with the FCC, and agrees to comply with the requirements and conditions set out in the compliance plan.

WHEREFORE, in the spirit of compromise, the Parties hereby stipulate and agree to the following terms and conditions:

1. Budget is a wireless service reseller offering wireless voice communications and Lifeline services in South Carolina.
2. Budget has requested wireless, Lifeline-only ETC designation in South Carolina.
3. Budget has limited its requested Universal Service Fund ("USF") support to the federal USF low income support program. Budget certifies that all low income USF funding it receives will be used to provide a credit to its Lifeline eligible customers, consistent with 47 C.F.R. 54.403.
4. Budget has filed its Federal Communications Commission ("FCC") approved Compliance Plan with the Public Service Commission of South Carolina ("Commission") and with the ORS. Any changes or modifications to the Company's FCC approved Compliance Plan must be filed with this Commission, with a copy to ORS, within five (5) days of approval at the FCC.
5. Budget agrees to advertise the availability of Lifeline using media of general distribution.
6. Budget agrees to offer Lifeline credits consistent with the rates, terms, and conditions contained in its rate schedules and website and will publish the availability and the pricing of these same offerings on its website.
7. Budget agrees to notify the Commission of any changes to its Lifeline rates in South Carolina.

8. Budget agrees to provide Lifeline customers the federal lifeline credit of \$9.25 per month, consistent with 47 C.F.R. 54.403. In addition, Budget agrees to provide all South Carolina Lifeline customers with a company funded \$3.50 credit. The Company may fulfill this commitment by adding 95 minutes to its South Carolina Plans; or, as currently intended by the Company, offer a “250 Minute Talk” South Carolina Lifeline plan at a monthly cost of \$0.00 and a non-Lifeline plan at \$12.75, and an “Active User Talk and Text South Carolina Lifeline plan at a monthly cost of \$25.00 and a non-Lifeline plan at a monthly cost of \$37.75. In the event the Commission, the Federal Communications Commission, or a court of competent jurisdiction issues a decision that a credit of \$3.50 is not required to be provided by ETCs to South Carolina Lifeline customers, the parties agree that this Agreement will be modified to reflect that ruling.

9. Budget agrees to allow qualifying low-income consumers to apply Lifeline discounts (federal and state) to any residential service plan that includes voice telephony service, including bundled packages of voice and data services; and plans that include optional calling features such as, but not limited to, caller identification, call waiting, voicemail, and three-way calling. Eligible telecommunications carriers may also permit qualifying low-income consumers to apply their Lifeline discount to family shared calling plans.

10. Budget agrees that it will abide by all advertising, reporting and verification requirements established by the FCC and the Commission.

11. Budget agrees that it will not seek reimbursement from the Federal Universal Service Fund for resold services where the company receives the Lifeline, and/or Toll Limitation Services through an underlying carrier.

12. Budget agrees to file with the ORS a certified true copy of its Form 497 filed quarterly with the Universal Service Administrative Company ("USAC"), including revisions thereto, no later than 5 calendar days after the Form or revision is filed with USAC.
13. Budget agrees to offer a toll blocking and/or limitation option if toll is included with Budget Lifeline service.
14. Budget agrees that the company will not seek reimbursement for toll limitation services. The company agrees to provide toll block at no charge to customers seeking the service. Consistent with this provision, the company agrees to block dialing when a Lifeline customer is roaming and such blocking may only be over-ridden by specific action by the customer on a per call basis.
15. Budget agrees to waive any and all activation fees or roaming charges for Lifeline customers.
16. Budget agrees to implement or to participate in a program for initial certification and annual verification that insures that an eligible Lifeline customer only receives one Lifeline credit per residential address and must conform with its compliance plan on file with the FCC and 47 C.F.R. 54-410.
17. Budget agrees to provide E911 compliant handsets to new Lifeline customers and replace any non-compliant handsets for its existing customers who are approved as Lifeline customers at no charge.
18. If the designations sought herein are granted, Budget will be supporting Universal Service in South Carolina based on its total South Carolina retail end user revenues, and must submit all documentation and Universal Service fees required by South Carolina.

19. Budget agrees to submit a quarterly report to ORS demonstrating the number of Lifeline customers who have been deactivated by Budget during the quarter due to: (1) non-payment on their customer account during two consecutive 30-day periods; (2) customer failure to comply with or pass the annual verification requirement; or (3) voluntary customer-requested deactivation.

20. Budget shall comply with all applicable state and federal laws, rules, and regulations regarding ETC designation and reporting requirements. More specifically, Budget agrees to abide by the Commission regulations regarding designation of an ETC found in 26 S.C. Code Ann. Reg. 103-690 as well as requirements set out by the FCC for ETC designation and for participation in the Lifeline program (e.g. FCC Regulation Part E).

21. The Parties represent that the terms of this Stipulation are based upon full and accurate information known as of the date this Stipulation is executed. If, after execution, either Party is made aware of information that conflicts, nullifies, or is otherwise materially different than that information upon which this Stipulation is based, either Party may withdraw from the Stipulation with written notice to the other Party.

22. Subject to the provisions set forth herein, ORS does not oppose the application of Budget for designation as an eligible telecommunications carrier.

23. ORS is charged by law with the duty to represent the public interest of South Carolina pursuant to S.C. Code § 58-4-10 (B) (Supp. 2011). S.C. Code § 58-4-10(B)(1) through (3) read in part as follows:

... 'public interest' means a balancing of the following:

- (1) concerns of the using and consuming public with respect to public utility services, regardless of the class of customer;
- (2) economic development and job attraction and retention in South Carolina;
- and

- (3) preservation of the financial integrity of the State's public utilities and continued investment in and maintenance of utility facilities so as to provide reliable and high quality utility services.

ORS believes the Stipulation reached among the Parties serves the public interest as defined above.

24. The Parties agree to advocate that the Commission accept and approve this Stipulation in its entirety as a fair, reasonable and full resolution of all issues in the above-captioned proceeding and that the Commission take no action inconsistent with its adoption. The Parties further agree to cooperate in good faith with one another in recommending to the Commission that this Stipulation be accepted and approved by the Commission. The Parties agree to use reasonable efforts to defend and support any Commission order issued approving this Stipulation and the terms and conditions contained herein.

25. The Parties represent that the terms of this Stipulation are based upon full and accurate information known as of the date this Stipulation is executed. If, after execution, either Party is made aware of information that conflicts with, nullifies, or is otherwise materially different than that information upon which this Stipulation is based, either Party may withdraw from the Stipulation with written notice to the other Party.

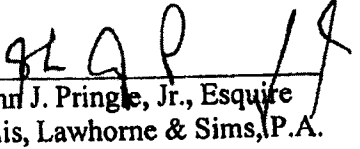
26. The Parties agree that signing this Stipulation will not constrain, inhibit, impair or prejudice their arguments or positions held in other collateral proceedings, nor will it constitute a precedent or evidence of acceptable practice in future proceedings. If the Commission declines to approve the Stipulation in its entirety, then any Party desiring to do so may withdraw from the Stipulation in its entirety without penalty or obligation.

27. This Settlement Agreement shall be interpreted according to South Carolina law.


28. The above terms and conditions fully represent the agreement of the Parties hereto. Therefore, each Party acknowledges its consent and agreement to this Stipulation by affixing its signature or by authorizing counsel to affix his or her signature to this document where indicated below. Counsel's signature represents his or her representation that his or her client has authorized the execution of the agreement. Facsimile signatures and email signatures shall be as effective as original signatures to bind any party. This document may be signed in counterparts, with the original signature pages combined with the body of the document constituting an original and provable copy of this Stipulation. The Parties agree that in the event any Party should fail to indicate its consent to this Stipulation and the terms contained herein, then this Stipulation shall be null and void and will not be binding on any Party.

[PARTY SIGNATURES TO FOLLOW ON SEPARATE PAGES]

On behalf of Budget PrePay, Incorporated d/b/a Budget Phone:


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On behalf of the Office of Regulatory Staff:

A handwritten signature in cursive script, reading "Nanette S. Edwards".

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